

# GOODWIN, PROCTER & HOAR

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
COUNSELLORS AT LAW



SDMS DocID 559817

April 18, 1990

BY HAND

Cindy Catri  
United States Environmental  
Protection Agency  
Region 1  
J.F. Kennedy Federal Building  
Boston, MA 02203-2211

Superfund Records Center  
SITE: Coakley  
BREAK: 11.9  
OTHER: 559817

Re: Coakley Landfill, North Hampton and  
Greenland, New Hampshire

Dear Ms. Catri:

As you know, my client, National Sea Products Incorporated ("NSP"), received a notice of potential liability and information request from the U.S. Environmental Protection Agency ("EPA") concerning the Coakley Landfill Superfund site (the "Site") dated February 2, 1990. On February 23, 1990, NSP responded to the information request describing its solid waste disposal practices during the period in question. A copy of that response is enclosed herein.

As we discussed by telephone and as described in NSP's response to request No. 2, NSP has no knowledge of the disposal of any of its wastes at the Site. I understand from discussions with various members of the Ad Hoc Coakley Landfill Site Steering Committee (the "PRP Committee") that NSP's inclusion on the list of potentially responsible parties ("PRPs") at the Site most likely stems from the fact that it purchased the Booth Fisheries facility in Portsmouth in 1983. Although we have not been provided with copies of them, we understand that there are a number of records available which indicate that Booth Fisheries may have shipped waste to the Site. No one I spoke with is aware of any direct connection

## GOODWIN, PROCTER & HOAR

Cindy Catri, Esq.

April 18, 1990

Page 2

between wastes generated by NSP and the Site, however, and I understand that the Coakley Landfill was shut down in March of 1983, two months after NSP acquired the Portsmouth facility. Given the dates of its operation and the date NSP acquired the facility, it is highly unlikely that any wastes generated by NSP would have ended up at the Site.

In light of the information described above and EPA's refusal to provide any information concerning NSP's connection to the Site, we can only conclude that NSP has been named as a PRP at the Site due to its relationship with Booth Fisheries. In that regard, I have enclosed a copy of the Agreement between NSP and Booth Fisheries at the time NSP acquired the Portsmouth facility along with a subsequent amendment to that Agreement. As you can see from these documents, NSP did not purchase the entire business of Booth Fisheries but only acquired certain specified assets and only assumed certain specified obligations of that entity. Booth Fisheries retained all liabilities and obligations which were not specifically assigned to NSP, including any liability for its waste disposal practices.

The Agreement and its Amendment make it clear, therefore, that NPS is not a successor in interest to Booth Fisheries and is not vicariously responsible for its liabilities. Furthermore, we understand that Booth Fisheries continues to exist as a viable entity and has been separately named by EPA as a PRP at the Site. As a result, to the extent that NSP has been named as a PRP at the Site because of the disposal practices of Booth Fisheries, we kindly request EPA to remove NSP from the list of potentially responsible parties at the Site. If EPA has included NSP on the list of PRP's at the Site for some other reason, we request you to provide us with the reasons for that decision so that NSP can properly evaluate its response to requests of the PRP Committee to participate in negotiations concerning response actions at the Site.

NSP wishes to cooperate with the Agency and the PRP Committee in connection with this matter. It does not believe, however, that it should be required to participate, at great cost, in response actions at a site with which it honestly believes it has no connection. At this time, therefore, NSP does not intend to participate in actions of the PRP Committee to address conditions at the Site. If EPA or the PRP Committee has specific information which has not been provided to NSP and which connects NSP to the Site in some manner, NSP would be happy to reconsider this position.

GOODWIN, PROCTER & HOAR

Cindy Catri, Esq.  
April 18, 1990  
Page 3

By copy of this letter and its enclosures, I am providing this information to Mark Beliveau on behalf of the PRP Committee.

If you have any questions or comments concerning this matter or need any additional information, please call me at 617-570-1612. I will attempt to contact you in a few days to determine your response to our request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul C. Nightingale", with a stylized, flowing script.

Paul C. Nightingale

PCN:mb  
Enclosures

cc: Mark Beliveau, Esq.,  
Coakley Landfill PRP Committee  
Kenneth Ritcey,  
National Sea Products Incorporated

XP-6549/n

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AGREEMENT FOR THE SALE AND PURCHASE OF  
CERTAIN ASSETS OF  
BOOTH FISHERIES CORPORATION AND  
CONSOLIDATED FOODS CORPORATION

BY AND AMONG

BOOTH FISHERIES CORPORATION,  
CONSOLIDATED FOODS CORPORATION  
NATIONAL SEA PRODUCTS, INC. AND  
NATIONAL SEA PRODUCTS LIMITED

JANUARY 20, 1983

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## TABLE OF CONTENTS

<u>SECTION NO.</u>	<u>TITLE</u>	<u>PAGE</u>
1.	Transfer of Assets	1
1.1	Assets to be Sold	1
1.2	Assets to be Retained	3
1.3	Obligations to be Assumed	3
1.4	Obligations to be Retained	4
2.	Consideration	5
2.1	Determination of Purchase Price	5
2.2	Payment of Purchase Price	6
2.3	Transfer Taxes	8
3.	Closing	8
4.	Seller's Representations and Warranties	9
4.1	Corporate Organization and Good Standing	9
4.2	Authorization of Agreement	9
4.3	Title to Machinery and Inventory	9
4.4	Title to Portsmouth Plant	10
4.5	Litigation and Compliance with Law	11
4.6	Condition of Assets	12
4.7	Booth Employees	12
4.8	Care of Assets Pending Closing	12
5.	Buyer's Representations and Warranties	13
5.1	Corporate Organization and Good Standing	13
5.2	Authorization of Agreement	13
5.3	Effect of Agreement	13
5.4	Hiring of Booth Employees	14
6.	Ancillary Agreements	14
6.1	Private Label Manufacturing Agreements	14
6.2	Right of First Refusal for Booth Trademarks	14

TABLE OF CONTENTS

Page 2

<u>SECTION NO.</u>	<u>TITLE</u>	<u>PAGE</u>
7.	Conditions Precedent to Buyer's Obligations	15
7.1	Representations and Warranties True at Closing	15
7.2	Performance	15
7.3	No Damage to Assets	16
7.4	Seller's Documents	16
8.	Conditions Precedent to Seller's Obligations	17
8.1	Representations and Warranties True at Closing	17
8.2	Performance	17
8.3	Buyer's Documents	17
9.	Effect of Failure to Meet Conditions Precedent	18
10.	Indemnification	19
10.1	Indemnification by Seller	19
10.2	Indemnification by Buyer	20
11.	Miscellaneous Provisions	20
11.1	Expenses	21
11.2	Entire Agreement	22
11.3	Modification and Waiver	22
11.4	Benefits	22
11.5	Severability	22
11.6	Governing Law	22
11.7	Waiver of Bulk Sales Act	23
11.8	Brokerage or Finder's Fee	23
11.9	Notices	23
11.10	Counterparts	24
11.11	Section and other Headings	24
	Signatures	25

## LIST OF EXHIBITS AND SCHEDULES

### EXHIBITS

- A. Form of Loan Agreement and Mortgage
- B. Form of Portsmouth Private Label Manufacturing Agreement
- C. Form of Matamoros Private Label Manufacturing Agreement

### SCHEDULES

- 1.1(a) Legal Description of Portsmouth Plant
- 1.1(b) List of Machinery
- 1.1(d) List of Commitments
- 1.1(e) List of Prepaid Expenses
- 2.1(c)(1) Fish and Seafood Market Value
- 2.1(c)(2) Booth's Standard Costs
- 4.4(a) List of Title Encumbrances
- 4.5 Litigation and Claims
- 5.4 List of Booth Employees Not Wanted by Buyer

## AGREEMENT

This Agreement made as of the 20th day of January, 1983, by and among Booth Fisheries Corporation, a Delaware corporation, (herein called "BFC") and Consolidated Foods Corporation, a Maryland corporation, (herein called "CFC") (herein collectively called "Seller") and National Sea Products, Inc., a Delaware corporation, (herein called "NSPI") and National Sea Products, Limited, a Nova Scotia corporation (herein called "NSPL") (herein collectively called "Buyer").

### W I T N E S S E T H:

WHEREAS, Seller desires to sell its Portsmouth, New Hampshire manufacturing and cold storage facility (herein called "Portsmouth Plant"); and

WHEREAS, Buyer desires to purchase the Portsmouth Plant; and

WHEREAS, Seller desires to have Buyer manufacture and arrange to distribute fish and seafood products at and from the Portsmouth Plant and Buyer is willing to do so; and

WHEREAS, Buyer desires to have Seller process shrimp at Seller's Matamoros, Mexico facilities (herein called "Matamoros Plants") and Seller is willing to do so;

NOW, THEREFORE, Seller and Buyer agree as follows:

#### 1. Transfer of Assets

##### 1.1 Assets to be Sold

Seller shall sell, assign and transfer to Buyer and Buyer shall purchase, assume and receive from Seller, on the Closing Date (hereinafter defined in Section 3 below), for



the consideration provided in Section 2 below, and subject to the terms and conditions contained in this Agreement, the following assets of Seller:

(a) Land, Buildings and Improvements

The Portsmouth Plant which is that certain parcel real property, together with all improvements thereon and appurtenances thereto, located at One Booth Avenue, Portsmouth, New Hampshire 03801, consisting of approximately 22.73 acres of land and upon which is erected a building containing approximately 185,000 square feet of space, all as more particularly described on Schedule 1.1(a) hereto which is incorporated herein by reference.

(b) Office and Plant Machinery and Equipment

All furniture, machinery and equipment owned by Seller and located on or in the Portsmouth Plant, including those items more particularly described on Schedule 1.1(b) hereto which is incorporated herein by reference (herein called "Machinery").

(c) Inventory

All of Seller's inventory of fish and seafood products, packaging, supplies, raw materials, breadings, batters, ingredients, and machinery spare parts and tools except for finished goods and Kliklok inner folding cartons bearing Booth trademarks, as counted on the Valuation Date (as hereinafter defined

in Section 2.1 below) (herein called "Inventory").

(d) Contract Rights

All of Seller's right, title and interest in and to all contracts, whether oral or written, related to the operation of the Portsmouth Plant, including without limitation, purchase orders for ingredients, breadings, batters and raw materials, leases, service or maintenance agreements, and license agreements (herein called "Commitments"), which Commitments are more particularly described on Schedule 1.1(d) hereto which is incorporated herein by reference.

(e) Prepaid Expenses

All security deposits posted by, advance payments for charges and services for the benefit of, and any prepaid obligations of Seller related to the Assets, all of which are more particularly set forth on Schedule 1.1(e) hereto which is incorporated herein by reference.

All of the above assets and properties to be sold by Seller to Buyer are collectively called "Assets".

1.2 Assets to be Retained

Seller shall retain all other assets related to its business, including without limitation, trademarks and tradenames related to its business.

1.3 Obligations to be Assumed

Seller shall assign to Buyer and Buyer shall assume

from Seller, on the Closing Date, the following liabilities and obligations:

- (a) All Commitments;
- (b) All local, state and federal taxes accruing on or after the Closing Date related to the operations of the Portsmouth Plant; and
- (c) All liability for products manufactured by Buyer at the Portsmouth Plant on and after the Closing Date.

All such obligations being assumed by Buyer are herein called the "Assumed Obligations". Notwithstanding anything to the contrary herein, Buyer shall not be obligated with respect to any Assumed Obligation except to the extent it constitutes a valid and legally enforceable claim against Seller.

#### 1.4 Obligations to be Retained

Seller shall retain all liabilities and obligations other than the Assumed Obligations, including without limitation:

- (a) All local, state and federal taxes accrued before the Closing Date; related to the operations of the Portsmouth Plant;
- (b) All employee wages, bonuses, benefits and associated taxes and insurance costs accrued before the Closing Date and severance expenses related to the sale of the Portsmouth Plant;
- (c) All liability for products manufactured by Seller at the Portsmouth Plant before the Closing Date;

## 2. Consideration

### 2.1 Determination of Purchase Price

The purchase price for the Assets (herein called "Purchase Price") shall be the value of the Assets, less the value of the Assumed Obligations, at the close of business on February 4, 1983, or such other date as mutually agreed to by Seller and Buyer (herein called "Valuation Date") both valued in accordance with the principles set forth below, plus or minus prorations for real property taxes, prepaid expenses as listed on Schedule 1.1(e) hereto and transferable permits, licenses, and fees:

(a) The Portsmouth Plant and Machinery shall be valued at Seller's net book cost, which will be \$4,800,000 on the Valuation Date;

(b) Real estate taxes shall be accrued as a proration between the parties to the Valuation Date, regardless of whether such taxes are a lien against the property as a legal liability of the owner of the property on such date;

(c) Categories of Inventory shall be valued as set forth below as physically counted on the Valuation Date:

(1) Fish and seafood: at market value per type of material in accordance with Schedule 2.1(c)(1) hereto;

(2) Other ingredients: at Booth's standard costs as per Schedule 2.1(c)(2) hereto; and

(3) Machinery parts and tools: lower of cost or market.

## 2.2 Payment of Purchase Price

Buyer shall pay Seller the Purchase Price in the following manner:

(a) Buyer contemplates financing the purchase of the Portsmouth Plant and Machinery portion of the Assets from the proceeds of the sale of a special industrial revenue bond issued by the New Hampshire Industrial Development Authority (herein called "Bond"). CFC shall purchase a bond of up to \$4.8 million bearing an interest rate of ten percent (10%) in accordance with the Loan Agreement and Mortgage attached hereto as Exhibit A on the earlier of the Closing Date or when it is issued thereafter, provided, the bond has been validly issued pursuant to the laws of the State of New Hampshire; the interest thereon will be, in the opinion of the bond counsel, Goodwin, Procter & Hoar, tax free when received by the holder thereof, the Bond will contain a right in the holder to require Buyer to repurchase the Bond or cause the Bond to be repurchased as provided in the Loan Agreement and Mortgage on the fifth anniversary of its issuance or upon the sale of the Portsmouth Plant by Buyer to a party not controlled

by NSPL whichever occurs earlier, and the Bond shall be guaranteed by NSPL.

(b) In the event the Bond has been issued on the Closing Date, Buyer shall pay the entire Purchase Price (less the face amount of the Bond which has been issued) to Seller in whichever of the following forms requested by Seller: certified or bank cashier's check or by wire transfer in Federal funds to one of Seller's bank accounts.

(c) In the event the Bond has not been issued by the Closing Date, Buyer shall pay the Purchase Price to Seller as follows:

1.) The portion of the Purchase Price related to the Portsmouth Plant and Machinery shall be paid by Buyer delivering to Seller its promissory note in the principal amount of such portion of the Purchase Price relating to those assets, bearing an interest rate of eighteen and one-half percent (18 1/2%) and due on the date the Bond is issued. The promissory note shall be secured by a first mortgage or deed of trust on the Portsmouth Plant which shall require NSPI to maintain, insure, protect and pay all taxes on the Portsmouth Plant in the same manner as set forth in the Loan Agreement and Mortgage.

(2) The balance of the Purchase Price shall be paid in whichever of the following forms requested by Seller: certified or bank cashier's check or by wire transfer in Federal funds to one of Seller's bank's accounts.

### 2.3 Transfer Taxes

Seller and Buyer shall each pay one half of the state real property transfer taxes due as the result of the transactions contemplated herein.

### 3. Closing

The closing of the transaction contemplated herein shall be held on the day after the determination of the Purchase Price (which is anticipated to be on or about February 8, 1983) at 10:00 A.M. in Buyer's counsel's offices at Goodwin, Procter & Hoar, 28 State Street, Boston, Massachusetts 02109, or at such other time and place as mutually agreed to by Seller and Buyer (herein called "Closing Date"). In the event the transaction contemplated herein does not close before February 12, 1983, Buyer shall pay Seller interest on the Purchase Price for the Portsmouth Plant and Machinery portion of the Assets at a rate of eighteen and one-half percent (18 1/2%) and on the balance of the Assets at a rate of eleven percent (11%) from February 12, 1983, to the Closing Date.

In the event the transaction contemplated herein has not been closed by May 1, 1983, this Agreement shall be null and void.

#### 4. Seller's Representations and Warranties

Seller represents and warrants to and covenants with Buyer as follows:

##### 4.1 Corporate Organization and Good Standing

BFC and CFC (a) are corporations validly existing and in good standing under the laws of the States of Delaware and Maryland, respectively; (b) are qualified or authorized to do business as foreign corporations in the State of New Hampshire, and (c) have all requisite power and authority to carry on their businesses now being conducted.

##### 4.2 Authorization of Agreement

Seller has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Agreement and has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly and validly authorized, executed and delivered on behalf of Seller and constitutes a valid and binding obligation enforceable in accordance with its terms.

##### 4.3 Title to Machinery and Inventory

Seller has good and marketable title to the Machinery and Inventory free and clear of all mortgages, claims, liens, charges, encumbrances, security interests, restrictions on transfer, or other material defects, and the sale and delivery of such Machinery and Inventory pursuant



to the terms of this Agreement will vest in Buyer good and marketable title thereto, free and clear of all mortgages, claims, liens, charges, and encumbrances, security interests, restrictions on transfer, or title defects of any nature, whatsoever, except for defects which are not of a material amount and liens for current taxes not yet due and payable.

#### 4.4 Title to the Portsmouth Plant

Seller has good and marketable title to the Portsmouth Plant free and clear of all mortgages, claims, liens, charges, encumbrances, security interests, restrictions on transfer, or other defects, except:

- (a) Encumbrances as set forth on Schedule 4.4(a) attached hereto and incorporated herein by reference;
- (b) Building, zoning and health regulations of the jurisdictions in which the Portsmouth Plant is located;
- (c) Taxes for 1983 and subsequent years.

Title shall be deemed good and marketable if a financially responsible title insurance company licensed to do business in the State of New Hampshire issues its commitment for title insurance showing title vested in Seller, subject only to the exceptions set forth above and the general or standard title insurance policy exceptions. Buyer shall be responsible for ordering the title insurance commitment and Seller shall deliver to Buyer a plat of

survey of the Portsmouth Plant dated September, 1982, prepared by John W. Durgin Associates, Inc. and Buyer shall pay for the titleinsurance premiums of any policies which may be ordered.

#### 4.5 Litigation and Compliance with Law

Except as set forth on Schedule 4.5, there are no material actions, suits, investigations or proceedings, pending or threatened, against or affecting the Assets at law or in equity, or before or by any court or federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, and there is no basis for any claim for compensation or damage or otherwise by any person or authority for any violation of the foregoing. There are no material judgments, orders, stipulations, injunctions, decrees or awards against the Assets enjoining Seller in respect of, or the effect of which is to limit, restrict, regulate or prohibit, the use of the Assets. The ownership and use of the Assets as a fish processing and cold storage facility comply in all material respects with the laws, statutes, regulations, orders, writs, injunctions or decrees of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, and there is no basis for any claim for compensation or damage or otherwise by any person or authority or otherwise for any violation of the foregoing.

#### 4.6 Condition of Assets

Seller shall transfer the Assets in the condition existing on the Closing Date. EXCEPT FOR INVENTORIES OF RAW MATERIALS, SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SELLS THE ASSETS IN THE CONDITION "AS IS". Raw material inventories are in good and marketable condition and in quantities which will be consumed in the ordinary course of production within three (3) months after the Valuation Date. All raw materials not consumed within three (3) months shall be repurchased by Seller on request of Buyer at the price Buyer paid Seller on the Closing Date.

#### 4.7 Booth Employees

Booth shall terminate the employment of all of its employees at the Portsmouth Plant who will not be needed by Booth after the sale contemplated herein is completed on the day before the Closing Date. Booth shall be solely responsible for all wages, bonuses, severance, vacation pay, employee benefits and associated taxes and insurance costs accrued through the date such termination occurs.

#### 4.8 Care of Assets Pending Closing

Seller shall operate the Assets in the ordinary course of business between January 20, 1983, and the Closing Date, but Seller shall not enter into any commitments which will be assumed by Buyer hereunder outside the ordinary course of business without the prior consent of Buyer.

## 5. Buyer's Representations and Warranties

Buyer represents and warrants to and covenants with Seller as follows:

### 5.1 Corporate organization and Good Standing

NSPI (a) is a corporation validly existing and in good standing under the laws of the State of Delaware; (b) is qualified or authorized to do business as a foreign corporation in the State of New Hampshire, and (c) has all requisite power and authority to carry on its business now being conducted.

### 5.2 Authorization of Agreement

Buyer has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Agreement and has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly and validly authorized, executed and delivered on behalf of Buyer and constitutes a valid and binding obligation enforceable in accordance with its terms.

### 5.3 Effect of Agreement

The execution, delivery and performance of this Agreement and the transactions contemplated hereby will not, with or without the giving of notice and/or the passage of time, result in the breach of or conflict with any term, covenant, condition or provision of, result in the modification or termination of, constitute a default under, or otherwise violate any financing arrangement or other material obligation of Buyer.

#### 5.4 Hiring of Booth Employees

Buyer shall use its best efforts to offer employment to all Booth's employees at the Portsmouth Plant who are terminated by Booth pursuant to Section 4.7 above, except those persons listed on Schedule 5.4 hereto which is incorporated herein by reference. Seller understands that the terms of the employment offered by Buyer will be in accordance with Buyer's regular employment policies as to job duties, compensation and benefits.

#### 6. Ancillary Agreements

##### 6.1 Private Label Manufacturing Agreements

As additional consideration for the sale of the Assets, Buyer shall enter into with Seller private label manufacturing agreements whereby:

- (a) Buyer will manufacture, store and deliver frozen fish and seafood products for Seller at the Portsmouth Plant; and
- (b) Seller will process shell-on shrimp for Buyer at Seller's Matamoros, Mexico plants.

The agreements shall be in the form attached hereto as Exhibits B and C, which are incorporated herein by reference.

##### 6.2 Right of First Refusal for Booth Trademarks

In the event Booth decides to discontinue manufacturing, marketing and distributing retail fish and seafood products and provided the private label

manufacturing agreement for the Portsmouth Plant is still in effect, Booth shall first offer the assets of its retail fish and seafood products business, including rights in its applicable trademarks, to Buyer on the terms Booth proposes to offer same to a third party (or on the terms offered to Booth by a third party). Buyer shall have ten (10) business days from the date of Booth's written offer to accept the offer. If Buyer declines the offer or fails to respond to Booth's offer within the ten (10) day period, Booth may offer the assets to a third party (or accept the offer of a third party) on substantially the same terms and conditions during a period of six (6) months following the offer to Buyer.

7. Conditions Precedent to Buyer's Obligations

All obligations of Buyer under this Agreement are subject to, at Buyer's option, the fulfillment, prior to or on the Closing Date, of each of the following conditions:

7.1 Representations and Warranties True at Closing

Seller's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

7.2 Performance

Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

### 7.3 No Damage to Assets

No material damage or destruction shall have occurred to or been suffered by the Assets between the date hereof and the Closing.

### 7.4 Seller's Documents

Seller shall have delivered to Buyer in a form satisfactory to Buyer's counsel, the following documents:

- (a) Opinion of Seller's Counsel, William S. Lipsman, as to the matters set forth in Sections 4.1, 4.2, 4.3 and 4.5.
- (b) Survey in accordance with Section 4.4.
- (c) Deed for the Portsmouth Plant.
- (d) Bill of Sale or other instruments of transfer for the Machinery and Inventory.
- (e) Certified copies of resolutions of CFC's and BFC's Boards of Directors authorizing the transactions contemplated herein.
- (f) Portsmouth Private Label Manufacturing Agreement.
- (g) Matamoros Private Label Manufacturing Agreement.
- (h) Certificate of Seller that representations and warranties set forth in this Agreement are true and correct at closing.
- (i) Consents to assignments of Commitments if obtainable before closing.

8. Conditions Precedent to Seller's Obligations

All obligations of Seller under this Agreement are subject to, at Seller's option, the fulfillment, prior to or on the Closing Date, of each of the following conditions:

8.1 Representations and Warranties True at Closing

Buyer's representations and warranties contained in this Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

8.2 Performance

Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

8.3 Buyer's Documents

Buyer shall have delivered to Seller in a form satisfactory to Seller's Counsel, the following documents:

(a) Opinion of Buyer's Counsel, Paul F. McDonough, Jr. of Goodwin, Procter & Hoar, as to the matters set forth in Sections 5.1, 5.2, and 5.3.

(b) Certified copies of resolutions of NSPI and NSPL's Boards of Directors authorizing the transactions contemplated herein.

(c) Promissory note in the principal amount of the portion of the Purchase Price related to the Portsmouth Plant and Machinery if the Bond have not been issued.

(d) First mortgage or deed of trust as required by Section 2.2 above.



(e) Cash equal to the Purchase Price less the principal amount of the Bond or promissory note, whichever is applicable.

(f) Portsmouth Private Label Manufacturing Agreement.

(g) Matamoros Private Label Manufacturing Agreement.

(h) Certificate of Buyer that representations and warranties set forth in this Agreement are true and correct at Closing.

(1) Title insurance commitment in accordance with Section 4.4.

9. Effect of Failure to Meet Conditions Precedent

In the event that any of the conditions precedent set forth in Sections 7 and 8 above are not satisfied, this Agreement shall be of no further force and effect and no party hereto shall be or become liable to the other party hereto whether for costs, damages, expenses, loss of profits or otherwise for or by reason of negotiation, execution or performance under the Agreement, and such failure to satisfy a condition precedent shall not constitute the basis for a claimed breach of any warranty, representation or undertaking contained in this Agreement after the Closing Date; provided, however, if the party in whose favor the unperformed condition precedent operates shall waive, in writing, the failure of the other party hereto to so satisfy the conditions precedent to it, then this Agreement shall remain in full force and effect as if the unsatisfied condition had been met.

10. Indemnification

10.1 Indemnification by Seller

Seller shall indemnify and hold Buyer harmless from and against and in respect of any and all claims, losses, liabilities and expenses incurred by Buyer in connection with: (a) all liabilities of Seller with respect to the Assets of any nature, whether accrued, absolute, contingent or otherwise, to the extent not assumed by Buyer pursuant to this Agreement, and (b) any breach of any of the representations, warranties, covenants or agreements made by Seller in this Agreement or in any other agreement, certificate or other document delivered by or on behalf of Seller to Buyer or any of its representatives in connection with the execution of this Agreement or the carrying out of the transaction provided for herein. Buyer shall give Seller prompt notice of any claims of third parties which may give rise to any indemnity under Section 10.1(a) and Seller shall have the right to assume the defense of any such claim. If Seller declines to assume any such defense, it shall be liable for all costs and expenses of the defending of such claim, including reasonable fees and disbursements of counsel. In the event Buyer shall bring any action against Seller upon a claim under Section 10.1(b), Seller shall be liable to Buyer for its reasonable fees and disbursements of counsel in connection therewith if Buyer prevails in the action.

Anything herein to the contrary notwithstanding, Seller shall be liable to Buyer under this Section 10.1 only to the extent that the aggregate indemnification liability under such Section (including related costs and expenses) shall in the aggregate exceed the sum of \$10,000; and further provided that in no event shall the indemnification liability under this Agreement exceed the value to be received by Seller from Buyer pursuant to this Agreement.

10.2 Indemnification by Buyer

Buyer shall indemnify and hold Seller harmless from and against and in respect of any and all claims, losses, liabilities and expenses incurred by Seller in connection with: (a) all liabilities of Seller with respect to the Assets of any nature, whether accrued, absolute, contingent or otherwise, to the extent assumed by Buyer pursuant to this Agreement, and (b) any breach of any of the representations, warranties, covenants or agreements made by Buyer in this Agreement or in any other agreement, certificate or other document delivered by or on behalf of Buyer to Seller or any of its representatives in connection with the execution of this Agreement or the carrying out of the transaction provided for herein. Seller shall give Buyer prompt notice of any claims of third parties which may give rise to any indemnity under Section 10.2(a) and Buyer shall have the right to assume the defense of any such

claim. If Buyer declines to assume any such defense, it shall be liable for all costs and expenses of the defending of such claim, including reasonable fees and disbursements of counsel. In the event Seller shall bring any action against Buyer upon a claim under Section 10.2(b), Buyer shall be liable to Seller for its reasonable fees and disbursements of counsel in connection therewith if Seller prevails in the action.

Anything herein to the contrary notwithstanding, Buyer shall be liable to Seller under this Section 10.2 only to the extent that the aggregate indemnification liability under such Section (including related costs and expenses) shall in the aggregate exceed the sum of \$10,000; and further provided that in no event shall the indemnification liability under this Agreement exceed the value of the Assets purchased by Buyer from Seller pursuant to this Agreement.

## 11. Miscellaneous Provisions

### 11.1 Expenses

Seller and Buyer agree that each shall pay its own expenses and the fees and expenses of its counsel, accountants and other business advisers in connection with the preparation, negotiation and execution of this Agreement and related closing documents, but Buyer shall pay all expenses related to the issuance of the Bond.

#### 11.2 Entire Agreement

This Agreement (including the Exhibits and Schedules hereto) and any document delivered by Seller or Buyer in accordance herewith constitute the entire agreement, and supercede all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

#### 11.3 Modification and Waiver

This Agreement shall not be modified, changed, discharged, or terminated, nor shall any provision of this Agreement be waived, except by a writing signed by the party against whom enforcement of any such modification, change, discharge, termination or waiver is sought.

#### 11.4 Benefits

This Agreement will inure to the benefit of the parties hereto and shall be binding upon them and their respective successors and assigns.

#### 11.5 Severability

The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of that section or of this Agreement. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted and enforced only to the extent that the provision is enforceable.

#### 11.6 Governing Law

The parties hereto agree that this Agreement shall be construed as to both validity and performance and shall be

enforced in accordance with and governed by the laws of the State of New Hampshire.

11.7 Waiver of Bulk Sales Act

Buyer hereby waives compliance by Seller with any bulk sales law enacted in the State of New Hampshire and applicable to the transaction which is the subject of this Agreement.

11.8 Brokerage or Finder's Fee

Seller and Buyer each warrants and represents to the other that no broker or finder brought the other party to its attention, assisted in arranging the transaction which is the subject of this Agreement, or is entitled to any brokerage commission or finder's fee in connection herewith. Seller and Buyer each shall indemnify and hold harmless the other against any costs, expenses, losses and damages incurred as a result of the assertion by any person, partnership, or corporation "that it is entitled to a brokerage commission or finder's fee in connection with this transaction.

11.9 Notices

All notices, requests, demands, and other communication which are required to, or may be given under this Agreement, shall be in writing and shall be deemed to have been duly given if delivered or mailed, registered or certified mail, return receipt requested, postage prepaid, to the party to whom the same is so given or made:

(a) To Seller at:

Booth Fisheries Corporation  
Two North Riverside Plaza  
Chicago, Illinois 60606

Attn: President

With copy to:

Consolidated Foods Corporation  
Three First National Plaza  
Chicago, Illinois 60602

Attn: General Counsel

(b) To Buyer at:

National Sea Products, Inc.  
5404 Cypress Center Drive  
Tampa, Florida 33601

Attn: Chairman or President

With copies to:

National Sea Products Limited  
P.O. Box 2130  
Halifax, Nova Scotia B3J 3B7

Attn: Corporate Secretary

Goodwin, Procter & Hoar  
28 State Street  
Boston, Massachusetts 02109

Attn: Paul F. McDonough, Jr.

(c) Or to such other address as any party shall have specified by notice to the other party.

11.10 Counterparts

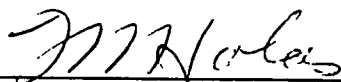
This agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be one and the same instrument.

11.11 Section and other Headings

The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, this Agreement was executed on  
January 20, 1983, by Seller and Buyer.

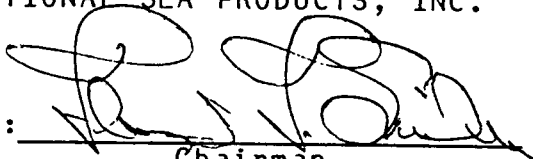
BOOTH FISHERIES CORPORATION

BY:   
President

CONSOLIDATED FOODS CORPORATION

BY:   
Group Vice President

NATIONAL SEA PRODUCTS, INC.

BY:   
Chairman

NATIONAL SEA PRODUCTS LIMITED

BY:   
Vice President



## FIRST AMENDMENT TO AGREEMENT

THIS AMENDMENT to Agreement made this 8th day of February, 1983, by and among Booth Fisheries Corporation, a Delaware corporation, (herein called "BFC") and Consolidated Foods Corporation, a Maryland corporation, (herein called "CFC") (herein collectively called "Seller") and National Sea Products Incorporated, a Delaware corporation, (herein called "NSPI") and National Sea Products Limited, a Nova Scotia corporation, (herein called "NSPL") (herein collectively called "Buyer").

### W I T N E S S E T H:

WHEREAS, Seller and Buyer entered into that certain Agreement for the Sale and Purchase of Certain Assets of Booth Fisheries Corporation and Consolidated Foods Corporation dated January 20, 1983, (herein called "Agreement"); and

WHEREAS, Seller and Buyer desire to amend the Agreement;

NOW, THEREFORE, Seller and Buyer agree as follows:

1. Section 1.3 of the Agreement is hereby amended by substituting the following language in place of

subparagraphs (b) and (c) and by adding subparagraph (d) as follows:

"(b) All local, state and federal taxes accruing after the Valuation Date related to the operations of the Portsmouth Plant;

"(c) All liability for products manufactured by Buyer at the Portsmouth Plant after the Valuation Date; and

"(d) All employee wages, bonuses, benefits and associated taxes and insurance costs accrued after the Valuation Date, and vacation pay accrued on or before the Valuation Date but unpaid by Seller, which Seller represents and warrants does not exceed ~~\$75,000~~ <sup>\$2,000,000</sup> in the aggregate and for which Seller shall pay Buyer at the Closing."

2. Section 1.4 of the Agreement is hereby amended by substituting the following language in place of the entire Section:

"1.4 Obligations to be Retained

Seller shall retain all liabilities and obligations other than the Assumed Obligations, including without limitation:

(a) All local, state and federal taxes accrued on or before the Valuation Date related to the operations of the Portsmouth Plant;

(b) All employee wages, bonuses, benefits and

associated taxes and insurance costs accrued on or before the Valuation Date and severance expenses related to the sale of the Portsmouth Plant; and

(c) All liability for products manufactured by Seller at the Portsmouth Plant on or before the Valuation Date."

3. Section 4.7 of the Agreement is hereby be amended by substituting the following language in place of the entire section:

"Booth shall use its best efforts to encourage all of its employees at the Portsmouth Plant, except those employees listed on Schedule 5.4 to this Agreement, to accept employment with Buyer. Booth shall be solely responsible for the severance pay of those employees set forth on Schedule 5.4 to the Agreement, as well as for up to two (2) line foremen. If Buyer severs the employment of such line foremen prior to May 8, 1983, Booth shall make severance payments to such line foremen in accordance with Booth's previously published severance policies."

4. Section 4.8 of the Agreement is hereby amended by substituting the following language in place of the entire Section:

"Seller shall operate the Assets in the ordinary course of business between January 20, 1983, and the Valuation Date, but Seller shall not enter into any

commitments which will be assumed by Buyer hereunder outside the ordinary course of business without the prior consent of Buyer. Upon completion of the count of the Inventory, or 11:59 P.M. on February 5, 1983, whichever occurs first, Buyer shall take possession and control of the Assets."

5. Section 5.4 of the Agreement is hereby be amended by substituting the following language in place of the entire section:

"Buyer shall use its best efforts to offer employment to all of Booth's employees at the Portsmouth Plant, except for those persons listed on Schedule 5.4 to the Agreement which is incorporated herein by reference. Seller understands that the terms of employment offered by Buyer will be in accordance with Buyer's regular employment policies as to job duties, compensation and benefits."

6. As an accommodation to Buyer, Seller shall pay all office employees at the Portsmouth Plant on February 10, 1983, the wages for the period from January 30, 1983 to February 12, 1983, and Buyer shall reimburse Seller at Closing for one half of such wages, representing the portion of the pay period after the Valuation Date when Buyer has control of the Assets.

IN WITNESS WHEREOF, this Amendment Agreement was executed  
on the date first above written.

BOOTH FISHERIES CORPORATION

BY: Frank W. Nolas  
President

CONSOLIDATED FOODS CORPORATION

BY: Frank W. Nolas  
Group Vice President

NATIONAL SEA PRODUCTS INCORPORATED

BY: [Signature]  
Chairman

NATIONAL SEA PRODUCTS LIMITED

BY: [Signature]  
Vice President